



## Yellowstone County Zoning Commission Minutes for the Meeting of September 13, 2004

The County Zoning Commission met on Monday, September 13, 2004 in room 403A, 4<sup>th</sup> floor of the Yellowstone County Courthouse.

Commissioners and Staff		1/12/04	2/9/04	3/8/04	4/12/04	5/10/04	6/14/04	7/12/04	8/9/04	9/13/04	10/12/04	11/8/04	12/13/04
Oscar Heinrich	Chairman	1	CANCELED	1	1	CANCELED	1	1	CANCELED	1			
Jerome Musselman	Vice-Chair	1		1	1		-	1		1			
Vacant	Commissioner	E		1	E		V	V		V			
Al Littler	Commissioner	1		1	1		1	1		1			
Joan Hurdle	Commissioner	1		1	1		1	1		1			
Vacant	Senior Planner/ Zoning Coordinator	-		1	1		-	V		V			
Candi Beaudry 657-8249	Planner II	-		-	-		-	1		-			
Karen Miller	Planning Clerk	1		1	1		1	1		1			
Nicole Cromwell 247-8662	Planner I	1		1	-		1	1		-			
Juliet Spalding 247-8246	Planner I	-		-	-		-	-		-			
Lora Mattox	Neighborhood Planner	-		-	-		-	-		-			
Wyeth Friday	Planner I	-		-	-		-	-		1			

**Oscar Heinrich, Chairman**, called the meeting to order at 4:01 p.m. **Chairman Heinrich** introduced the County Zoning Commission members and staff in attendance.

### PUBLIC COMMENT

There were none.

## **ANNOUNCEMENTS**

**Chairman Heinrich** announced that an application had been received for the vacancy on the Commission. **Chairman Heinrich** stated that Dennis Cook is scheduled to be appointed to the Zoning Commission by the BOCC at their meeting of September 14, 2004.

### **Approval of Minutes:**

*On a motion by Commissioner Littler, seconded by Vice-Chair Musselman and passed by a 3-0 voice vote, the minutes for the meeting of June 14, 2004 were approved as distributed.*

*On a motion by Commissioner Littler seconded by Vice-Chair Musselman and passed by a 3-0 voice-vote the minutes of July 12, 2004 were approved with the following amendments: Page 5, paragraph 1, “tricolor” should be “trichlor”.*

### **Public Hearings:**

**Chairman Heinrich** reviewed the rules for the procedure by which the public hearings will be conducted. **Chairman Heinrich** said the applications heard at this meeting would be forwarded to the BOCC at their meeting of September 21, 2004.

### **Item #1      Special Review #296:**

**Mr. Friday** read the legal description and reviewed the staff report. **Mr. Friday** pointed out the property location on the overhead projector for the audience and reviewed the existing surrounding properties while explaining the existing zoning surrounding the subject property. **Mr. Friday** said staff is forwarding a recommendation of conditional approval. **Mr. Friday** explained the reasons for the staff decision and reviewed the recommended conditions.

## **REQUEST**

A special review to allow a 175’ AM radio antenna tower in a Controlled Industrial zone on property located in the Lockwood Industrial Park Subdivision. The property is located at 2310 North Frontage Road.

## **APPLICATION DATA**

OWNER:	Jerry T. Ray
AGENT:	Richard Solberg
CURRENT ZONING:	Controlled Industrial
LEGAL DESCRIPTION:	Lot 3, Block 1, Lockwood Industrial Park Subdivision
ADDRESS:	Located at 2310 North Frontage Road, Lockwood
SIZE OF PARCEL:	2 Acres
EXISTING LAND USE:	Vacant
PROPOSED LAND USE:	AM Radio Tower

### **APPLICABLE ZONING HISTORY**

**Special Review #240:** Conditionally approved on March 24, 1998. Special Review to allow a 100' communication tower in a Controlled Industrial zoning district along the south side of Lockwood Road at the intersection with Steffes Road behind Planet Lockwood.

**Special Review #265:** Conditionally approved on October 24, 2000. Special Review to allow a 250' cellular communication tower in an Agricultural-Open Space zone on Tract 3 of Certificate of Survey 3011 located at the intersection of Bitterroot Drive and Yellowstone River Road. Note: Construction of this tower never occurred and this Special Review has since **expired**.

### **Discussion:**

**Chairman Heinrich** asked if this application were approved for the tower would they be able to change the use.

**Mr. Friday** said that he did not recall any restrictions preventing them from using the tower.

**Chairman Heinrich** asked if staff could review the regulations to verify that the specific approval of this application would not allow a change in use.

**Mr. Friday** reviewed the restriction for modifications of the towers.

**Chairman Heinrich** asked if there was anyone in attendance wishing to speak in favor of or in opposition to Special Review #296.

*The public hearing was opened at 4:22 p.m.*

### **Applicant:**

**Richard Solberg**, 9045 Hobble Creek, said one of the things that the Commission should be aware of is that other uses of the tower are contemplated when an application is submitted, such as wireless internet access. **Mr. Solberg** said there are other restrictions that would not allow them to utilize the tower for certain uses. **Mr. Solberg** said that the FCC mandates the towers. **Mr. Solberg** said they would entertain other options for that tower. **Mr. Solberg** said the tower is a live tower which means that there are limited options for that type of tower.

**Chairman Heinrich** explained that the reason for concern regarding the allowable change in use is mainly due to the possibility of setting a precedent for other towers. **Chairman Heinrich** asked for clarification of what the applicant was considering as another use for the tower.

**Mr. Solberg** said that he was looking into high speed internet access, or a wireless access.

**Mr. Friday** explained that the special review would be to a specific use. **Mr. Friday** indicated that for a use that is not covered by this application the applicant would need another special review specific to that type of use.

**Chairman Heinrich** explained that the use proposed with this application is strictly for an AM antenna. **Chairman Heinrich** explained that if the applicant were to use the antenna for anything but that specific use for this application they would be in violation of the zoning code.

**Mr. Solberg** said he did not see a problem with that at this time.

**Commissioner Littler** asked what it would cost to remove the tower.

**Mr. Solberg** said it depends on the probability of recycling the metal used for the tower. **Mr. Solberg** stated that previously he had a contractor remove an old tower at no charge and the contractor was allowed to keep the steel. **Mr. Solberg** said the current cost of steel encouraged this particular contractor to remove the tower and make a profit from recycling the steel.

**Vice-Chair Musselman** asked for clarification of the proposed fence.

**Mr. Solberg** pointed out the location of the fence on the overhead projected site plan.

**Commissioner Littler** asked for clarification of the signs and banners.

**Mr. Friday** said that staff is recommending that no signs, banners, or flags will be allowed on the tower.

**Commissioner Littler** asked if they could install a neon sign to advertise the radio station what owns the tower.

**Mr. Friday** explained the sign regulation restrictions as well as the tower regulations that restrict such signs.

**Mr. Solberg** said this is an FCC license and construction permit. **Mr. Solberg** asked that the Commission consider that his license and permit would expire by October 10, 2004. **Mr. Solberg** asked the Commission not to delay taking action on his application.

**Opponents:**

There were none present.

**Chairman Heinrich** asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Special Review #296.

There were none.

*The public hearing was closed at 4:41 p.m.*

**Discussion:**

**Chairman Heinrich** expressed concern regarding how the tower would look along the highway.

**Mr. Solberg** explained that the site would remain gravel and there would be grass planted and maintained.

**Commissioner Littler** asked if there were zoning requirements for landscaping on the subject property.

**Chairman Heinrich** said that in the Controlled Industrial zone there are no requirements for landscaping (There are requirements for landscaping in the Controlled Industrial zoning district. However, given the use of the property for a tower with anchor cables and an antennae array buried around the base of the tower, it did not seem feasible to landscape the property).

**Mr. Solberg** clarified that if they were to plant trees it could potentially interfere with the tower's use so they only had planned to plant grass.

**Motion:**

*On a motion by Commissioner Littler and seconded by Vice-Chair Musselman, and passed by a 3-0 voice vote, a recommendation for approval of Special Review #296 will be forwarded to the BOCC at their meeting of September 21, 2004, with the following conditions:*

- 1. The antenna support structure and antenna shall not be artificially lighted except as required by the Federal Aviation Administration.*
- 2. There shall be no signs, symbols, flags, banners or other similar devices attached to, painted on or inscribed on any part of the antenna support structure or antenna.*
- 3. The tower shall be finished in a non-reflective neutral color.*
- 4. There shall be no ladder rungs on the tower within 20' of the ground.*
- 5. The area around the base of the tower, the guy wire anchor points, and the equipment shack shall be secured by fencing. Any barbed wire on the fencing shall be located at least 8' above the ground. FCC regulations stipulate some of the fencing requirements and shall be met.*
- 6. The tower and equipment shack shall meet the required setbacks of the Controlled Industrial Zoning District as described in Section 27-309 of the Zoning Regulations.*
- 7. The applicant shall contact the Montana Building Codes Division to make sure the construction of the tower meets any building code requirements of the state.*
- 8. In the event that the tower becomes abandoned, the applicant/landowner shall be responsible for the removal of the tower at his/her own cost (i.e. no cost to Yellowstone County). Any antenna support structure that has had no antenna mounted upon it for a period of 180 days, or if the antenna(s) mounted thereon are not operated for a period of 180 successive days, shall be considered abandoned (Section 27-621 (i)).*
- 9. Any change in the use of the tower would be necessary to apply for a special review to reflect that use.*

**Commissioner Littler** requested staff include in the report to be submitted to the BOCC the night time radius would be 15 and day time would be 50.

**Other Business:**

There was none.

**Adjournment:**

The meeting was adjourned at 4:51 p.m.

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**Oscar Chairman Heinrich, Chairman**

**ATTEST:**

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**Karen Miller, Planning Clerk**